

Although described somewhat differently in the application for review, the issues raised on appeal are:

- (1) The date or dates of accident;
- (2) Whether respondent has established that the employer retained the claimant with knowledge of a handicap;
- (3) The extent of liability of the Kansas Workers Compensation Fund.

Because the Appeals Board finds two accidents, the nature and extent of disability resulting from each is also an issue.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The issues raised by the Kansas Workers Compensation Fund in this appeal all relate to the fact that claimant suffered more than one injury. The Award by the Special Administrative Law Judge makes only one finding of general disability, apparently finding only one accident, and yet assesses seventy-five percent (75%) of the Award against the Kansas Workers Compensation Fund. The Appeals Board agrees that the evidence establishes more than one injury and more than one date of accident. For the reasons stated below, the Appeals Board finds two accidents; one a series causing bilateral carpal tunnel syndrome and the second a series causing injury to claimant's shoulders. The Appeals Board also finds the Kansas Workers Compensation Fund is liable for payment of one hundred percent (100%) of the benefits payable for the injury to claimant's shoulders but not responsible for any of the benefits payable for the carpal tunnel injury.

Claimant testified and the medical records reflect claimant began experiencing pain in his right forearm sufficient to require medical attention in March of 1991. He was first seen at Boeing Central Medical on March 25, 1991. He reported that on March 21, 1991, he was drilling steel and pushed a little harder than usual. His symptoms began at that time with aching and within a few days he had tingling and numbness. He became unable to grip with his right hand. He was referred to Dr. Lesko for an orthopedic consultation and on March 26, 1991, Dr. Lesko diagnosed carpal tunnel syndrome and flexor tenosynovitis. He prescribed a splint for claimant's right forearm and recommended that claimant start therapy. Although Dr. Lesko's records refer to "hands" it seems apparent from other evidence in the record that the initial complaints were of the right hand only. Claimant testifies that the complaints began in the right hand. The records at Boeing Central Medical indicate his initial complaints on March 25 were to the right hand only. Dr. Lesko testified that although his records use the plural "hands" it would be consistent with his records if the complaints were on the right side only at the initial visit.

After the first visit, Dr. Lesko also recommended that claimant not use vibratory tools. Claimant, nevertheless, returned to his regular duties. Claimant saw Dr. Lesko for the second time on April 9, 1991. At this second visit, Dr. Lesko diagnosed carpal tunnel syndrome on the left as well as the right. Claimant then continued to work until May 1, 1991, when he took off work for surgery. Dr. Lesko thereafter performed carpal tunnel releases on both sides and claimant was off work until November 1991.

Respondent argues that the Kansas Workers Compensation Fund should be responsible for the carpal tunnel on the left. Dr. Zimmerman did testify that in his opinion the left was the result of compensating for the right and would not have occurred but for the right. Dr. Lesko agreed that this can happen. The Appeals Board finds, however, that respondent has not established Fund liability for the left side carpal tunnel syndrome.

Before liability can be assessed against the Kansas Workers Compensation Fund it must first be shown that the respondent employed or retained the claimant with knowledge of handicap. K.S.A. 44-566 states:

"'Handicapped employee' means one afflicted with or subject to any physical or mental impairment, or both, whether congenital or due to an injury or disease of such character that the impairment constitutes a handicap in obtaining employment or would constitute a handicap in obtaining reemployment if the employee should become unemployed...."

The Appeals Board agrees that the evidence supports a finding that Dr. Lesko diagnosed carpal tunnel syndrome on the right before he diagnosed the left. Specifically, he diagnosed the right on March 26, 1991, and included the left on April 9, 1991. It seems apparent, however, that the respondent did not have knowledge of a handicap before the diagnosis was changed to bilateral on April 9, 1991. As respondent's representative, Dr. Zimmerman was fully aware of Dr. Lesko's examination and findings on March 26, 1991, but testified that he did not believe there was any permanent impairment after Dr. Lesko's March 26 exam. He insists that claimant did not have carpal tunnel syndrome at that time and he did not consider Dr. Lesko's diagnosis as a conclusive diagnosis of carpal tunnel. He understood it to be a presumptive diagnosis and believed the condition could yet resolve. Although Dr. Lesko recommended claimant not use vibratory tools, claimant testified that respondent continued to have him perform the same duties. The Appeals Board concludes that respondent did not have knowledge of a handicap until Dr. Lesko diagnosed bilateral carpal tunnel syndrome on April 9, 1991. The Workers Compensation Fund is not, therefore, liable for any portion of the benefits awarded for claimant's carpal tunnel condition.

The Appeals Board also considers the bilateral condition to be one injury which entitles claimant to a general body disability. The Appeals Board finds credible Dr. Lesko's testimony that the right and left carpal tunnel condition came from essentially the same circumstances and at approximately the same time. Both Dr. Zimmerman and Dr. Schlachter testified that claimant has a twelve percent (12%) general body functional impairment due to the bilateral carpal tunnel. No other expert testified on this question. Claimant returned to employment at Boeing and work disability has not been made an issue. The Appeals Board, therefore, finds that the claimant has a twelve percent (12%) permanent partial impairment of function due to the bilateral carpal tunnel. Benefits for this injury are to be paid by the respondent.

The Appeals Board finds, however, that claimant's shoulder injuries did develop after respondent had retained claimant with knowledge of his bilateral carpal tunnel condition. While it appears claimant's shoulder symptoms, at least those on the right, may have begun before the carpal tunnel surgeries, it seems clear that the symptoms in both shoulders became worse after he resumed work in November of 1991 following the carpal tunnel surgery. The symptoms thereafter progressed to the point that they required additional medical care and he was referred then to Dr. Morris. Dr. Morris provided additional treatment for the shoulders and claimant was not released from care for the shoulders until June of 1992. At the time Dr. Schlachter saw claimant on April 4, 1993, he indicates that the symptoms in the shoulder had been unchanged for approximately six months. While this six months does not date back precisely to the point of his release from care by Dr. Morris in June of 1992, it appears most likely the symptoms did reach maximum medical improvement in June of 1992.

The Appeals Board also finds that the shoulder injuries would not have occurred but for the wrist and hand conditions. Both Dr. Schlachter and Dr. Zimmerman testified that in their opinion, the shoulder injuries would not have occurred but for the preexisting carpal tunnel condition. The evidence indicates that for each shoulder the symptoms began after claimant started wearing a splint on his forearm. Dr. Zimmerman testified that he believed that the claimant was using the shoulder differently, protecting it from carpal tunnel area and the splint. He states that this is fairly frequent following carpal tunnel releases. He diagnosed, as did Dr. Schlachter, rotator cuff tendinitis. The Appeals Board finds that the disability in claimant's shoulders would not have occurred but for the preexisting bilateral carpal tunnel.

Dr. Schlachter concluded claimant has permanent disability in both shoulders while Dr. Zimmerman concluded it was temporary. Based on the duration of the symptoms the Appeals Board finds most likely claimant does have permanent disability in both shoulders. Dr. Schlachter provided the only assessment of the permanent disability in the shoulders, i.e., ten percent (10%) impairment to the body for the right shoulder and five percent (5%) for the left. The Appeals Board therefore finds claimant has a fifteen percent (15%) general body functional impairment due to the shoulder injury which would not have occurred but for the preexisting carpal tunnel condition. The Appeals Board further finds that the respondent retained claimant with knowledge of the preexisting carpal tunnel and that the Kansas Workers Compensation Fund is, therefore, responsible for one hundred percent (100%) of the award for the shoulder injuries.

As the Kansas Workers Compensation Fund has indicated in its appeal, there needs to be a determination made as to the date of accident in each case. As to the carpal tunnel symptoms it appears that those symptoms were aggravated through May 1, 1991, when claimant left work for the bilateral carpal tunnel surgery. The shoulder injuries, however, continued to be aggravated after claimant's return to work in November of 1991 and thereafter through June 1, 1992, when claimant's was released from treatment for the shoulder injuries. May 1, 1991, is therefore, used as the date of accident for the bilateral carpal tunnel and June 1, 1992, is used for the date of accident for the shoulder injuries. These dates will be used for commencement of benefits. The parties have stipulated to an average weekly wage of \$730.31 exclusive of fringe benefits which it appears continued to be provided. This stipulation is made without referring to a particular date and the stipulated wage will be used for both dates of accident.

AWARD

WHEREFORE, an award of compensation is hereby made in accordance with the above findings in favor of the claimant, Ronald D. Lamar, and against the respondent, Boeing Military Airplanes, and its insurance carrier, Aetna Casualty & Surety Company for accidental injury sustained from March 1991 through May 1, 1991, and based upon an average weekly wage of \$730.31 for 27.57 weeks of temporary total disability compensation at \$278.00 per week in the sum of \$7,664.46 and 387.43 weeks of compensation at the rate of \$58.43 for twelve percent (12%) permanent partial disability in the sum of \$22,637.53 making a total award for claimant's bilateral carpal tunnel syndrome of \$30,301.99.

Further award of compensation is hereby made in favor of the claimant, Ronald D. Lamar and against the Kansas Workers Compensation Fund for accidental injury from March 1991 through June 1, 1992, for a fifteen percent (15%) general body disability which

entitles claimant to 415 weeks of permanent partial disability compensation at the rate of \$73.03 for a total of \$30,307.45.

As of July 11, 1994, there is due and owing the claimant for the bilateral carpal tunnel syndrome occurring from March 1, 1991, through May 1, 1991, \$7,664.46 in temporary total disability compensation and 139.29 weeks of permanent partial disability compensation at the rate of \$58.43 per week in the sum of \$8,138.71 making a total due and owing of \$15,803.17 remaining 248.14 weeks are to be paid at the rate of \$58.43 per week until fully paid or further order of the Director.

For the injuries to claimant's shoulder occurring through June 1, 1992, there would be due and owing to claimant as of July 11, 1994, 110.14 weeks at the rate of 73.03 weeks for a total of \$8,043.52. The remaining 304.86 weeks are to be paid at the weekly rate of \$73.03 until fully paid or further order of the Director.

There would, therefore, be due and owing to the claimant on both injuries the total of \$15,803.17 as of July 11, 1994.

Pursuant to K.S.A. 44-536, the claimant's contract of employment with his counsel is hereby approved.

Fees necessary to defray the expenses of administration of the Workers Compensation Act are hereby assessed as follows:

William F. Morrissey	
Special Administrative Law Judge Fee	\$150.00
Barber & Associates	
Transcript of Regular Hearing	\$178.05
Deposition Services	
Deposition of Kenneth Zimmerman, M.D.	\$337.00
Harper & Associates	
Deposition of Paul Lesko, M.D.	Unknown
Ireland Court Reporting	
Deposition of Ernest Schlachter, M.D.	\$233.25

IT IS SO ORDERED.

Dated this _____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Lawrence M. Gurney, 1861 N Rock Road, Suite 320, Wichita, Kansas 67206
Frederick L. Haag, 700 Fourth Financial Center, Wichita, Kansas 67202
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William F. Morrissey, Special Administrative Law Judge
George Gomez, Director